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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,342	03/23/2000	Colin D. Nayler	E0871	9949
45305	7590	03/07/2006	EXAMINER	
RENNER, OTTO, BOISSELLE & SKLAR, LLP (AMDS)			KUMAR, PANKAJ	
1621 EUCLID AVE - 19TH FLOOR			ART UNIT	
CLEVELAND, OH 44115-2191			PAPER NUMBER	
			2631	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/533,342

Applicant(s)

NAYLER, COLIN D.

Examiner

Pankaj Kumar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 is/are allowed.
- 6) ☒ Claim(s) 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 23 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/23/2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/28/2005 have been fully considered but they are not persuasive.
2. Applicant argues that Tzukerman does not teach automatically adjusting the amplifier gain setting for amplifying a modulated carrier signal received from another network transceiver since Tzukerman teaches selecting gain values corresponding to the modulation type of a signal to be transmitted and hence Tzukerman deals with power control in a transmitter and not in a receiver. This is not persuasive. The portion applicant is arguing about in his argument (i.e. automatically adjusting the amplifier gain setting for amplifying a modulated carrier signal received from another network transceiver) is all taught by Kim as embodied in the claim as explained the prior action. Tzukerman was not used to teach this portion of the claim. Tzukerman was only used to teach another portion of the claim (i.e. selecting the gain based on the modulation). Kim teaches adjusting in a receiver and although Tzukerman teaches adjusting in a transmitter, it would be obvious to combine since Kim suggests selecting the gain (Kim fig. 3: 230) (something broad) in general and Tzukerman suggests the beneficial use of selecting the gain based on the modulation such as maintaining average constant power level (Tzukerman col. 2 lines 36-38) because different modulations have different powers (Tzukerman col. 2 lines: 32-34).
3. Applicant argues that the motivation of maintaining constant power level cannot be used since Tzukerman teaches that maintaining constant power level is for a transmitter. This is not persuasive. Even though Tzukerman teaches that maintaining constant power level is for a

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transmitter, maintaining constant power level also applies to receivers. Again the rejection was based on a combination of Tzukerman and Kim and Kim teaches a receiver which would gain by having constant power.

4. Applicant argues that since Kim deals with HDTV, it cannot gain by having constant power. This is not persuasive. There are many advantages to an HDTV having constant power. One might be that since power generates heat, a cooling system in the HDTV can be specified better and would be more efficient if the cooling system knew that the amount of heat generated would be at some constant level.

5. Applicant argues that modifying Kim to select gain based on modulation technique rather than whether a segment synchronizing signal is correctly detected would defeat the primary purpose of Kim. This is not persuasive. The modification of Kim to select gain based on modulation technique can be used in conjunction with Kim selecting gain based on whether a segment synchronizing signal is correctly detected. For example, if Kim can realize that the received signal is a 64 QAM signal, then it would select a gain from one of the high gain levels and based on whether the signal was correctly received, it could adjust the gain again to one of the higher set of gains. If Kim can realize that the received signal is a BPSK signal, then a lower amount of gain can be used to conserve power and based on whether the signal was correctly received, it could adjust the gain again to one of the lower set of gains.

6. Applicant's arguments are trying to bodily incorporate one reference into another reference. Although it can be bodily incorporated in this case as explained, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly

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suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Response to Amendment***

#### ***Drawings***

7. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application in order to make a potential patent look professional. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Tzukerman USPN 6,724,829. See prior action for details.

### ***Allowable Subject Matter***

10. Claims 1-20 are allowed.

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11. Claims 23-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
12. See prior action(s) for details.

### ***Conclusion***

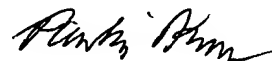
13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pankaj Kumar whose telephone number is (571) 272-3011. The examiner can normally be reached on Mon, Tues, Thurs and Fri after 8AM to after 6:30PM.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad H. Ghayour can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Pankaj Kumar  
Patent Examiner  
Art Unit 2631

PK